

EXHIBIT 3

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - x

JAMES BENBOW,

Plaintiff,

-against- Civ. No.: 17-CV-6457(EK) (LB)

CITY OF NEW YORK; POLICE OFFICER BRIAN W.
FEELY; POLICE OFFICER MATTHEW J. ROSIELLO;
POLICE OFFICER KENNETH L. ANDERSON; SERGEANT
WILLIAM A. DAIB; POLICE OFFICER SHANIEL J.
MITCHELL; and POLICE OFFICER STEPHEN J.
MINUCCI,

Defendants.

- - - - - x

VIDEOCONFERENCE VIA ZOOM
Conducted by:
LEX REPORTING SERVICE, INC.
160 Broadway
New York, New York

December 7, 2020
2:31 p.m.

DEPOSITION of POLICE OFFICER BRIAN

WILLIAM FEELEY, named herein as **POLICE OFFICER**
BRIAN W. FEELY, a Defendant in the
above-entitled action, held remotely via Zoom
videoconference, pursuant to Order, taken
before Tania C. Pedrosa, a shorthand reporter
and Notary Public within and for the State of
New York.

LEX #161124



REPORTING SERVICE, INC.

PROFESSIONAL REPORTING SINCE 1980

TOLL FREE 800.608.6085

1 B. W. Feeley 16

2 A Who?

3 Q Carl Thompson, does that jog your
4 memory at all --

5 A No.

6 Q -- in relationship to your -- any
7 lawsuit that you've been a part of as a
8 police officer?

9 A No.

10 Q Has anyone ever sat you down from
11 the police department and reviewed your
12 lawsuit history as a police officer?

13 MR. WEINER: Objection.

14 Go ahead.

15 A Has anyone -- like, can you just
16 restate the question?

17 Q Sure. Has anyone from the police
18 department sat you down and discussed the
19 lawsuits that have been filed against you as
20 a police officer?

21 MR. WEINER: Objection.

22 Go ahead.

23 A With -- within the NYP -- like,
24 an NYPD personnel?

25 Q Yeah.

1 B. W. Feeley 17

2 A No.

3 Q Okay. Has anyone ever discussed
4 with you any CCRB or complaint that's been
5 lodged against you --

6 MR. WEINER: Objection.

7 Q -- from the police department?

8 MR. WEINER: Objection.

9 A From the police department or the
10 CCRB -- the CCRB employees?

11 Q I'm asking about the police
12 department.

13 A No.

14 Q Has anyone from the police
15 department ever sat you down and spoken with
16 you about any Internal Affairs history that
17 you have?

18 MR. WEINER: Objection.

19 Go ahead.

20 A I'm sorry. All I heard was
21 internal -- rephrase the question. Sorry.

22 Q His objection got in the way?

23 A Maybe. I don't know.

24 Q No. That's okay. That's okay.
25 Has anyone in the police

1 B. W. Feeley 18

2 department sat you down and discussed with
3 you your Internal Affairs history?

4 MR. WEINER: Objection.

5 Go ahead.

6 A Once again, I -- all I hear is
7 internal something. I don't know if it's --

8 Q Okay. I'll repeat it again for
9 you. Okay?

10 A Yeah, louder and slower because,
11 like, it's --

12 Q There's a delay, okay.

13 Has anyone from the police
14 department ever sat you down and discussed
15 your Internal Affairs history with you?

16 A Oh, all right.

17 MR. WEINER: Objection.

18 Go ahead.

19 A No.

20 Q Has anyone from the police
21 department ever sat you down and discussed
22 your work performance history with you?

23 MR. WEINER: Objection.

24 A Like, what do you mean? Like,
25 my, like, evaluation or something like that?

1 B. W. Feeley 19

2 Q Well, other than an evaluation,
3 had anyone ever sat you down and talked to
4 you about how you were performing in terms if
5 you need to do better or you have any C --
6 you have CCRB complaints or you have other
7 complaints that need to be addressed?

8 MR. WEINER: Objection.

9 A No.

10 Q Okay. Is it accurate to say that
11 the only time that anyone's ever discussed
12 your work performance with you at the NYPD is
13 during your annual evaluation?

14 MR. WEINER: Objection.

15 A Yeah, when we get the evals.

16 Q Okay. Have you ever received a
17 negative evaluation?

18 A No.

19 Q Okay. Have you ever received any
20 form of discipline as it relates to any CCRB
21 complaints or lawsuits or any other complaint
22 lodged against you?

23 MR. WEINER: Objection.

24 A Any -- not from CCRB or lawsuits,
25 not that I'm -- not that I'm aware of.

1 B. W. Feeley 28

2 A The types -- I know I have
3 complaints but I don't know what -- like,
4 which -- what is -- what complaints are
5 lodged against me.

6 Q Okay. And how do you know you
7 have complaints?

8 A Because I've been to, like, CCRB.

9 Q Okay. So when there's a
10 complaint against you, CCRB calls you down
11 and talks to you about them and they meet
12 you; is that correct?

13 A Yes.

14 Q Okay. And that's --

15 A I mean --

16 Q -- how you know you have
17 complaints, correct?

18 A Yes.

19 Q Other than CCRB, has anyone else
20 at the police department ever spoken to you
21 about the number of complaints you have?

22 MR. WEINER: Objection.

23 Go ahead.

24 A No.

25 Q Has anyone at the NYPD ever

1 B. W. Feeley 29

2 spoken to you about any of the complaints
3 you've had?

4 A No.

5 Q Have you ever been placed on any
6 performance monitoring by the NYPD?

7 A No.

8 Q Has anyone at the NYPD ever
9 talked to you about performance monitoring?

10 MR. WEINER: Objection.

11 A No.

12 Q Other than the two lawsuits that
13 you described earlier in which you were a
14 defendant, are you aware of any other
15 lawsuits that you were a defendant in as a
16 police officer?

17 A Well, you said for the
18 depositions. I remember two depositions for
19 lawsuits.

20 Q Yeah.

21 A But, yes, I have -- there was
22 more -- more -- I know there's more than two
23 lawsuits filed against me --

24 Q Okay. Approximately how -- I'm
25 sorry.

1 B. W. Feeley 32

2 depositions I remember, so it's more than
3 two. But I know there's more lawsuits but I
4 can't -- I don't want to give you --

5 Q Okay.

6 A -- the roundabout because I don't
7 know the exact number.

8 Q I understand your testimony.
9 Thank you.

10 Other than the normal retraining
11 that you receive, were you ever sent for
12 retraining for any disciplinary purpose?

13 MR. WEINER: Objection.

14 You can go ahead.

15 A No.

16 Q Were you ever sent for any
17 training as a result of any complaints lodged
18 against you?

19 A No.

20 Q Were you ever sent for any
21 training as a result of the lawsuits filed
22 against you?

23 A No.

24 Q Have you ever testified under
25 oath other than your depositions?

1 B. W. Feeley 43

2 Q Okay. So tell me the use of
3 force training that you remember since the
4 academy.

5 A The most recent one is the -- you
6 watch how to effect an arrest of -- for the
7 diaphragm, you know, how to take -- you know,
8 arrest somebody with the new laws -- with the
9 diaphragm laws.

10 Q Okay. And that was, I'm going to
11 guess, this year; is that correct?

12 A Yes, yeah.

13 Q Okay. Before that, do you
14 remember receiving any use of force training?

15 A Yeah, but I don't know the time
16 -- you know, dates and times and stuff like
17 that but there was other trainings.

18 Q Okay. Before this incident --
19 let me strike that.

20 In between the time that you
21 graduated the academy and the shooting of
22 Mr. Benbow, did you receive use of force
23 training?

24 A I don't remember.

25 Q Were you ever given training in

1 B. W. Feeley 47

2 25 or 30 yards away you have to hit a target,
3 correct?

4 A Yes.

5 Q And what weapon were you
6 qualified in in 2015?

7 A It was the SIG Sauer.

8 Q Okay. Were you qualified in any
9 other weapon?

10 A No.

11 Q Okay. And when you hit these
12 targets from various distances away, you have
13 to -- you aim at center mass, correct?

14 A Yes.

15 Q Okay. And you're taught that
16 center mass if someone is facing you is from
17 the neckline to the waist, correct?

18 A Yes.

19 Q Shoulder to shoulder, correct?

20 A Yes.

21 Q Okay. And if someone is behind
22 you, center mass would be the bottom of the
23 neck to the waistline from shoulder to
24 shoulder, correct?

25 A Yes.

1 B. W. Feeley 51

2 that are e-mailed to you?

3 MR. WEINER: Objection.

4 A No.

5 Q Okay. Now, as a police officer,
6 is it accurate to say that on almost a daily
7 basis while you were in the 77 you had to
8 make decisions regarding when to use force?

9 A Can you say it again?

10 Q Sure. As a police officer in the
11 77 -- correct? That's where you were in
12 2015; is that correct?

13 A Yes.

14 Q Okay. So as a police officer in
15 the 77, would you agree with me that you have
16 to make determinations on a fairly regular
17 basis on whether or not to use force?

18 A Yes.

19 Q And that is a part of your job
20 function as a police officer to decide
21 whether or not you need to use force,
22 correct?

23 A Yes.

24 Q Okay. And in addition to
25 deciding whether or not to use force, you're

1 B. W. Feeley 52

2 also confronted with on a daily basis as a
3 police officer on how much force to use if
4 you decide to use force, correct?

5 A Yes.

6 Q That's an integral part of your
7 job function, correct?

8 A Yes.

9 Q Okay. Now, in terms of probable
10 cause and making an arrest, would you agree
11 with me that as a regular part of your job as
12 a police officer, you have to make
13 determinations regarding probable cause?

14 A Yes.

15 Q Okay. And you're confronted on a
16 near-daily basis on whether or not you have
17 probable cause, correct?

18 A Yes.

19 Q Okay. Have you ever been taught
20 by the NYPD about any duty to intervene?

21 A Say that -- can you read -- can
22 you say it again?

23 Q Repeat the question?

24 A Yes, please.

25 Q Okay. Did you not hear it or you

1 B. W. Feeley 63

2 you shot Mr. Benbow, correct?

3 A Yeah.

4 Q Let's get that out of the way.

5 Okay. Other than Mr. Benbow,
6 have you ever discharged your weapon?

7 A No.

8 Q Are you permitted to shoot
9 someone just because they have a gun?

10 MR. WEINER: Objection.

11 A No. Every -- every scenario is
12 different so...

13 Q Okay. I understand. But just
14 generally speaking, if someone has a gun, is
15 that a reason in and of itself to shoot that
16 person?

17 A No.

18 Q Okay. If someone is running away
19 from you with a gun, is that a reason to
20 shoot that person?

21 MR. WEINER: Objection.

22 Q You can answer.

23 A It -- you know, it depends. If
24 he's posing a threat to someone else, like,
25 running away, like pointing at another

1 B. W. Feeley 66

2 Q No, you can't shoot him, correct?

3 A Like I said, it's different
4 scenarios. Like, you're giving a person --

5 Q No. I'm going off what you just
6 said. If someone is running --

7 A Is he in the field unarmed?

8 Q Hold on a second.

9 A Is he in --

10 Q Hold on a second.

11 A -- the street --

12 Q Hold on a second.

13 A You know --

14 Q I'm going to use -- I'm going to
15 use your response.

16 If someone is running away with a
17 gun, okay, not posing a threat to anybody,
18 they're just running away with a gun --

19 A Yeah -- no, I wouldn't.

20 Q -- you'd shoot that person,
21 right?

22 A I wouldn't, no. You're not
23 supposed --

24 Q Well, it's not you wouldn't.
25 You're trained that you can't shoot that

B. W. Feeley

67

person --

A Yeah.

Q -- correct?

Okay. Now, on the day of the incident, what was your height?

A My height?

Q Yeah.

A Six-two I want to say.

Q And what was your weight -- approximately, if you can?

A 250 to 260ish, around there.

MR. ABOUSHI: Off the record.

(Whereupon, a discussion was held off the record.)

MR. ABOUSHI: All right.

Back on the record, please.

BY MR. ABOUSHI:

Q So you're six-two, approximately 250 pounds.

What was your tour that day?

A I believe it was 1730, which is 5:30 p.m., to 2:00 in the morning.

Q Did you do anything before your

1 B. W. Feeley 68

2 shift?

3 A I don't -- I don't remember what
4 I did before.

5 Q Okay. Do you know if you came
6 from your house? somewhere else?

7 A No, I don't remember.

8 Q Did you have anything to drink
9 before you started your shift?

10 A No.

11 Q Okay. Were you coming from any
12 parties or anything like that, any
13 celebrations?

14 A I don't remember what I did
15 before.

16 Q What time did your tour end that
17 day?

18 A That day of the --

19 Q Yeah, the night of the incident
20 actually. It's more afternoon.

21 A I don't remember. It was, like,
22 the next day, I know that.

23 Q Okay. After the shooting did you
24 go back to work? did you take time off? did
25 you have an RDO? something else?

B. W. Feeley

75

passenger's seat?

A I don't remember.

Q Okay. Do you know who was sitting behind you?

A No.

Q Okay. Now, you shot Mr. Benbow that night, correct?

A Yes.

Q Okay. Was it intentional? Did you mean to shoot him?

A Did I mean to shoot him?

Q Yeah.

A Yes.

Q Okay. And how many times did you shoot him?

A I don't -- I don't know.

Q How many times did you fire your weapon at him?

A I believe it was three.

Q Okay. And isn't it true that you testified that you fired your weapon at Mr. Benbow because he pointed a gun at you?

A Yes.

Q Okay. And was he running away

1 B. W. Feeley 80

2 Q Okay. You don't know if the
3 gun --

4 A It happened very fast.

5 Q I'm sorry.

6 A It happened very fast.

7 Q Okay. I understand you say it
8 happened very fast.

9 Now, when Mr. Benbow was shot,
10 was he running or was he stationary?

11 A He was coming around in between
12 two cars, so, like, I guess -- I don't know
13 if he was -- like, he wasn't sprinting
14 anymore, like he wasn't --

15 Q Okay. Did you shoot him while he
16 was in between the two cars or after he
17 exited from in between the two cars and he
18 was in the street?

19 A I believe he was in between the
20 two cars.

21 Q Okay. So he was in between the
22 two cars when you shot him, correct?

23 A Yes.

24 Q Okay. And that's your testimony,
25 right?

1 B. W. Feeley 82

2 A Yes.

3 Q Okay. So you were in front of
4 him, he was running, and he started to raise
5 his gun in your direction while you were
6 standing in front of him, correct?

7 A Yes.

8 Q Okay. And then you fired three
9 shots, correct?

10 A Yes.

11 Q Okay. And after you shot him, he
12 went right down, correct?

13 MR. WEINER: Objection.

14 A I believe he -- I mean, I
15 remember him, like, falling forward.

16 Q Okay. Falling forward?

17 A Yeah, not like -- yeah.

18 Q Okay. So he fell forward.
19 Where was Rosiello when you fired
20 your weapon?

21 A I remember them being on the
22 sidewalk.

23 Q Okay. And where was Anderson
24 when you fired your weapon?

25 A On the sidewalk.

1 B. W. Feeley 110

2 MR. WEINER: You tell
3 yourself to calm down.

4 MR. ABOUSHI: And you've
5 condoned his conduct here and --
6 you know, we'll get to that.

7 MR. WEINER: Absolutely.

8 Q So he runs in between two cars
9 and he's running straight towards the other
10 side of the street when you shot him,
11 correct?

12 A He was coming out between the two
13 cars, yeah.

14 Q I'm not saying where he was
15 coming out from. Okay. I'm asking you: He
16 was running straight from one sidewalk to the
17 other when you shot him, correct?

18 MR. WEINER: Objection.

19 A I don't know where he was going.
20 Like, I -- I don't know if he was -- the
21 destination was the other side of the
22 sidewalk. I don't --

23 Q I'm not telling you -- I'm not
24 asking you where his destination was.

25 MR. WEINER: You cut him

1 B. W. Feeley 146

2 of the shots?

3 A I don't -- I want to say it was
4 kind of within -- all together, like it was,
5 like, kind of one motion, kind of...

6 Q Okay.

7 MR. ABOUSHI: When you say
8 you want to say, do you remember
9 or are you just guessing?

10 THE WITNESS: Yes. It was
11 -- it was -- it was all -- it was
12 like -- it wasn't, like, time
13 went on. It was, you know, like
14 -- I feel like it was, you know,
15 one and then one, two, like all
16 kind of...

17 Q Okay. So if you could estimate,
18 how many seconds were between the --
19 transpired between the first time you shot
20 and the last time you shot?

21 A Oh, it was very quick.

22 Q Okay.

23 A Maybe 20 seconds, 30 -- not --
24 not long.

25 Q No. The first -- I'm sorry. The